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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 25th November 2014

No. 9671—IR(ID)22/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th September 2014 in Industrial Dispute Case No. 13 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Bata India Ltd. and its Workman Shri Trilochan Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 13 of 2012

Dated the 24th September 2014

Present :

Shri S. K. Sahoo, O.S.J.S.(sr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The management of—	..	First Party—Managements
(i) The Manager Personnel &		
Administration, M/s Bata India		
Ltd., Retail East Chain,		
6A, S.N. Banerji Road, Post Box		
No. 8913, Kolkata-700013, West Bengal.		
(ii) The District Manager, M/s. Bata India		
Ltd., Kalpana Square, Bhubaneswar,		
Khurda.		

And

Its workman, Shri Trilochan	..	Second Party—Workman
Sahoo, S/o. Late Duryodhan		
Sahoo, Plot No. 1896,		
Chintamaniswar, P.S. Laxmi Sagar,		
Bhubaneswar, Dist. Khurda.		

Appearances :

Shri Ankit Anand, Auth. Rept.	..	For the First Party—Managements
Shri Trilochan Sahoo	..	For the Second Party—Workman himself

AWARD

The Government of Odisha, in the Labour & E. S. I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 3187—IR(ID)22/2012-LESI., dated the 23rd April, 2012 :

"Whether the duties of salesman can be deemed as workman under I.D. Act, 1947. If so, whether the action of the Management of M/s Bata India Ltd., in terminating the services of Shri Trilochan Sahoo, Ex-Salesman w.e.f. the 17th August 2011 without following Section 25-F and Section 25-G of the I.D. Act, 1947 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?"

2. The case of the second party workman is that he was engaged as a Salesman in different District of Odisha, under the Management of M/s Bata India Ltd., Kolkata, vide D.P. No.33986 from the 24th February 1994 to 16th August 2011. He has completed more than 240 days continuous employment within a period of 12 months preceding to his disengagement. He was also a beneficiary under the E. P. F. Scheme. On the 10th May 2007, he was transferred to Shop No.522/00271 of Jeypore from Bhubaneswar. Suddenly that shop was closed on the 17th August 2011 without any communication to the second party. The second party has intimated about the illegal closure of the shop to the first party management. In pursuance of letter dated the 17th August 2011 of the Manager of Jeypore Shop the second party reported to duty at Kolkata on the 22nd August 2011, but no step was taken by the first party for his engagement. The transfer of the second party outside the State of Odisha is in violation of the rules made by the first party management. The second party has submitted a representation to the first party in the month of September, 2011. The post of Salesman are lying vacant at Bhubaneswar and Cuttack but the second party was not adjusted in those posts. Since his termination, the second party is not gainfully employed else-where. He has prayed for his reinstatement in service with full back wages and service benefits.

3. In spite of notice issued to the first party organisation none turned up to contest the case on behalf of the first party. Hence it was *set ex parte*. After *ex parte* hearing Award was passed by this Court on the 11th September 2012, which was duly notified by the Government of Odisha, Labour and E. S. I. Department by Notification No. 9218—IR(ID)22/2012-LESI., dated the 8th November 2012. However, on approach by the first party the said *ex parte* Award was set aside by this Court

by order dated the 7th June 2013, and allowed to file written statement, and accordingly written statement was filed on the 27th June 2014. The case of the first party management is that the present claim of the second party is not maintainable. The second party was engaged by the Shop Manager, M/s Bata Shoe Store, Jeypore, Koraput, Odisha as a temporary hand as per daily requirement. On the 17th August 2011 the said shop was closed and the second party workman was advised to report to the office of the Management situated at Kolkata to resume his duty through letter dated the 22nd August 2011 and 19th October 2012. He remained absent unauthorisedly for which an explanation was called for from him even after several correspondence made to him he did not turn up to his duty. For that reason the first party management was compelled to treat the second party to be ceased to an employee under it. The second party is not entitled for any relief. However during hearing of the case the first party did not turn up for which it was set *ex parte*.

4. Basing on the pleadings of the parties the following issues are settled :

ISSUES

1. "Whether the duties of salesman can be deemed as workman under I. D. Act, 1947. If so, whether the action of the Management of M/s Bata India Ltd., in terminating the services of Shri Trilochan Sahoo, Ex-Salesman w.e.f. the 17th August 2011, without following Section 35-F and Section 35-G of the I. D. Act, 1947 illegal and/ or justified ?
2. If not, what relief Shri Sahoo is entitled to ?"

5. The second party workman is examined as W.W.1 and Extts.1 to 12 are marked on his behalf. Ext.1 is the photo copy of the appointment letter, Ext.2 is the photo copy of confirmation letter, Ext.3 are the photo copies of E.P.F. Slips, Ext.4 is the photo copy of change of designation, Ext.5 is the photo copy of application of the second party dated the 5th September 2011 to the Manager (P & A), Ext.6 is the photo copy of the representation of the second party, Ext.7 is the photo copy of letter, dated the 17th August 2011 issued by the Manager, Jeypore to the workman, Ext.8 is the photo copy of the representation of the second party, dated the 7th January 2012, Ext.9 is the photo copy of letter, dated the 17th September 2011 issued by the District Manager, Bhubaneswar, Bata India Ltd., to the second party. Ext.10 is the photo copy of the order passed by the Hon'ble Court in W. P.(C) No.31896/2011. Ext.11 is the affidavit of the second party, dated the 30th April 2012, Ext.12 is the letter, dated the 27th November 2011 issued by the second party to the District Manager, 522, Bata India Ltd., Bata Shoes Store, Kalpana Square, Bhubaneswar.

In his evidence W. W. 1 the second party workman testified that he was working as a Salesman under the control of Manager, Bata India Ltd., Kolkata, vide D. P. No.33986 for the period the 24th February 1994 to 16th August 2011 at different district of Odisha and completed more than 240 days continuous employment in a year within 12 months preceding to his termination. At Paragraph-2 of his affidavit evidence he further deposed that while he was posted at Jeypore in Shop No. 522/ 00271, all of a sudden the first party closed the shop on the 17th August 2011 without any communication to him. It is also clear from his evidence that as per the direction of the first party management he had been to Kolkata, but the first party management did not allow him to resume his duty and since then he is unemployed. From Extts.1 to 3, 4, 5, 9, and 10 it is clear that the

second party was appointed as a Salesman in the first party Organisation since the 24th February 1994. Extts. 5, 6, 7, 8, 9 are the communications in between the parties relating to the employment of the second party under the first party. Ext.10 is the photo copy of the order passed by the Hon'ble Court in W. P. (C) No. 31896 of 2011. On perusal of the same it transpires that an Industrial Dispute was also raised by the second party before the D. L. O., Bhubaneswar. From the evidence of W. W. 1 and the documents available on the record it is clear that the shop of the first party organisation situated at Jeypore was closed on the 17th August 2011 suddenly without any intimation to the second party. It is also clear from the evidence of W. W. 1 and contents of Ext. 7 that the second party had been to Kolkata and approached the Authority of the first party management but, he was not engaged at any place under the first party organisation. After analysing the testimony of the workman and the documents proved by him it is clear that the second party is a workman who was illegally terminated from his service since the 17th August 2011. The evidence of W. W. 1 is on oath and goes unchallenged. It is also reliable and trust worthy. In spite of several opportunities given to the first party management it did not turn up to contest the case by leading evidence. So adverse inference is also taken against the first party organisation. In view of the aforesaid reasons I am constrained to hold that the second party workman was illegally terminated from his service with effect from the 17th August 2011 and he is entitled for reinstatement in service with full back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing which the amount of back wages shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. SAHOO
24-09-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
24-09-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government